



15 NOV 2002

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In re Application of
DAVIES, et al.
Application No.: 10/031,637
PCT No.: PCT/EP00/03515
Int. Filing Date: 19 April 2000
Priority Date: 24 April 1999
Attorney Docket No.: PG3693USW
For: MEDICAMENT CARRIER

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This decision is in response to applicant's "Resubmission of Petition" filed 07 November 2002 with the United States Patent and Trademark Office (USPTO) resubmitting a "Petition For Revival of an International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" purportedly filed 03 May 2002.

BACKGROUND

On 19 April 2000, applicant filed international application PCT/EP00/03515, which claimed priority of an earlier application filed 24 April 1999. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 24 October 2001.

On 26 October 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by payment of the full U.S. Basic National Fee; a copy of the International Preliminary Examination Report; a copy of the International Search Report; an Information Disclosure Statement and a First Preliminary Amendment. An oath or declaration of the inventors was not included.

On 19 December 2001, applicant filed a second transmittal letter for entry into the national stage in the United States, which was accompanied by an executed combined declaration and power of attorney and authorization to charge Deposit Account No.: 07-1392 the \$130.00 surcharge for providing an oath or declaration of the inventors later than thirty months from the earliest claimed priority date.

On 24 April 2002, applicant was mailed a "Notification of Abandonment" (Form

PCT/DO/EO/909) informing applicant that the above identified application was abandoned as to the United States of America for failure to file the application in a timely manner consistent with 37 CFR 1.495.

On 07 November 2002, applicant filed the present petition including a true copy of an express mail receipt and return postcard dated 03 May 2002, a true copy of a petition for revival for the present application dated 03 May 2002, a copy of the Form/PCT/DO/EO/909 and a copy of the certification of express mail.

DISCUSSION

Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In the present case applicant has provided a copy of a return postcard containing a USPTO date stamp "JC02 Rec'd PCT/PTO 03 May 2002" which lists: Authorization to Charge Dep. Acct # 07-1392; Petition For Revival of Abandoned 37 CFR 1.137(b) and Cert. Of Express Mail. Thus it is clear that the petition was originally filed with the USPTO on 03 May 2002.

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the required reply was submission of copy of the International Application as filed and payment of the full, U.S. Basic National Fee. As noted above, applicant filed the application and paid the appropriate U.S. Basic National Fee on 26 October 2001.

As to Item (2) the appropriate petition fee on 03 May 2002 was \$1280.00. As authorized, this fee will be charged to Deposit Account No.: 07-1392.

With regard to Item (3), applicant's statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States were satisfied with the filing of the executed combined declaration and power of attorney on 19 December 2001.

CONCLUSION

For the reasons stated above, the petition for revival is **GRANTED**.

This application has an international application filing date of 19 April 2000 and will be given a date of **19 December 2001** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for further processing in accordance with this decision.



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